

AMENDED IN ASSEMBLY APRIL 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1174

Introduced by Assembly Member Leslie

February 21, 2003

~~An act to add Section 40125 to the Public Resources Code, relating to solid waste.~~
An act to repeal and add Division 32 (commencing with Section 60000) to the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1174, as amended, Leslie. Solid waste: ~~electronic waste products~~ *Sacramento Regional County Solid Waste Authority.*

(1) The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, establishes an integrated waste management program. The act requires each city, county, city and county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan. Existing law authorizes a city or county to form a regional agency with another city or county for the purpose of complying with the integrated waste management program.

Existing law provided for the creation of the Sacramento Regional County Solid Waste Management District on July 1, 1994, if specified conditions were met.

This bill would repeal those inoperative provisions and would instead enact the Sacramento Regional County Solid Waste Authority Act. The bill would authorize the authority to expend the revenue derived from the fee imposed upon a commercial solid waste hauler and collected by the authority only to oversee, manage, and enforce the authority's

nonexclusive commercial franchise system and to offset those reasonable and necessary regional costs, as defined, that are incurred by the authority.

The bill would require the authority, by March 1, 2004, and on or before March 1 of each year thereafter, to prepare and distribute a detailed report itemizing how fees were expended during the previous calendar year, and a proposed budget. The bill would require the authority, at the request of any person or entity, to produce, within 30 days of that request, specified documents. The bill would prohibit the authority from requiring the person or entity making that request to pay a fee until the authority complies with this request.

The bill would require the authority, by March 1, 2004, and at least once every 2 years thereafter, to arrange for an independent audit of all costs supported by fee revenues.

The bill would authorize an aggrieved party, to file an action if the authority expends fee revenues for a purpose not authorized by the act, or are generated or used in violation of any other applicable requirement. The bill would require an aggrieved party, before filing the action, to provide notice to the authority at least 60 days before filing the action and would authorize the aggrieved party to file the action if an aggrieved party does not reach an agreement with the authority after providing that notice. The bill would require the court to issue a preliminary injunction if the aggrieved party makes a specified demonstration and to award the aggrieved party, if it prevails, damages in a specified amount, interest, attorneys' fees, and costs. The bill would specify related matters.

The bill would impose a state-mandated local program by imposing new requirements upon the County of Sacramento and the cities and local agencies within the county.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires the California Integrated Waste Management Board to administer state programs to recycle plastic trash bags, plastic packaging containers, waste tires, newsprint, and other specified materials.~~

~~This bill would define “electronic waste” for the purposes of those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

~~SECTION 1. Section 40125 is added to the Public Resources~~

SECTION 1. Division 32 (commencing with Section 60000) of the Public Resources Code is repealed.

SEC. 2. Division 32 (commencing with Section 60000) is added to the Public Resources Code, to read:

DIVISION 32. SACRAMENTO REGIONAL COUNTY SOLID
WASTE AUTHORITY ACT

CHAPTER 1. GENERAL PROVISIONS

60000. This division shall be known, and may be cited, as the “Sacramento Regional County Solid Waste Authority Act.”

60001. The Legislature hereby finds and declares as follows:

(a) The County of Sacramento and the City of Sacramento formed the Sacramento Regional County Solid Waste Authority on December 15, 1992, pursuant to Article 3 (commencing with Section 40970) of Chapter 1 of Part 2 of Division 30 as an interim structure prior to the enactment of the Sacramento Regional County Solid Waste Management District Act (former Division 32 (commencing with Section 60000)).

(b) The Legislature authorized the establishment of the Sacramento Regional County Solid Waste Management District by former Division 32 (commencing with Section 60000) to facilitate a coordinated solid waste management system and to facilitate compliance with the planning and landfill diversion requirements of the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000)).

(c) The Sacramento Regional County Solid Waste Management Authority now includes the County of Sacramento and the cities of Citrus Heights and Sacramento and continues to operate as a joint powers authority.

1 (d) In October 2000, the authority replaced its system for
2 permitting solid waste collectors with a purported nonexclusive
3 commercial franchise system and imposed a new fee of 7.25
4 percent of the gross revenue of all franchised haulers. One year
5 later, the authority increased the fee to 8 percent, and the authority
6 is currently considering an additional increase in the fee. The
7 current nonexclusive fee increases the cost of solid waste services
8 paid by Sacramento area businesses by more than three million
9 dollars (\$3,000,000) per year.

10 (e) Although Ordinance 8 adopted by the authority requires all
11 revenue from the nonexclusive commercial fee to be used to fund
12 regional costs associated with commercial solid waste
13 management, the authority also distributes revenue from the fee to
14 the cities of Sacramento and Citrus Heights for unspecified
15 programs or purposes.

16 (f) Although the City of Sacramento competes with private
17 solid waste enterprises for commercial garbage accounts, the
18 authority has exempted the City of Sacramento from the collection
19 and payment of all the nonexclusive fees.

20 (g) The purpose of this division is to do all of the following:

21 (1) Provide a means of ensuring that all actions by the authority
22 to impose, collect, and expend revenue from fees on commercial
23 solid waste haulers are consistent with applicable state and federal
24 laws.

25 (2) Ensure that fee revenue is not used to subsidize or offset the
26 operating costs of a public agency that competes with private solid
27 waste enterprises and that the fees are collected from all public and
28 private haulers.

29 (3) Provide a clear remedy if fees on commercial solid waste
30 haulers are unlawfully collected or expended by the authority.

31 60002. For purposes of this division, the following definitions
32 shall apply:

33 (a) "Authority" means the Sacramento Regional County Solid
34 Waste Authority formed pursuant to a joint powers agreement,
35 initially executed on December 15, 1992.

36 (b) "Commercial solid waste hauler" means a solid waste
37 enterprise that is engaged in the business of collecting, removing,
38 or transporting commercial solid waste within the boundaries of
39 the authority. "Commercial solid waste hauler" includes the City
40 of Sacramento.

1 (c) “Permitting and mitigation fee” or “fee” means a percent
2 of the gross revenue of a commercial solid waste hauler that is
3 charged as a condition of providing solid waste handling services
4 within the jurisdiction of the authority.

5 (d) “Regional costs” means all of the following:

6 (1) The equitable commercial share of those reasonable and
7 necessary costs incurred by the County of Sacramento for the
8 direct remediation of the unlined portion of the Kiefer Landfill.
9 These remediation costs include monitoring the groundwater for
10 contamination, remediating gas and water pollution from the
11 unlined landfill, and debt payments for those buffer land purchases
12 that were made solely for the purpose of mitigating contamination
13 problems from the unlined portions of the landfill.

14 (2) The equitable commercial share of the actual and necessary
15 costs of landfill monitoring and the net cost of landfill gas
16 management for the unlined portion of Kiefer Landfill.

17 (3) The equitable commercial share of actual and necessary
18 costs to remediate the Elk Grove and Grand Island closed landfills.

19 (4) The cost of providing specific solid waste services,
20 including business education, hazardous waste diversion, and
21 white goods diversion that benefit or serve all commercial
22 businesses regardless of where their wastes are sent for disposal,
23 unless these services are also made available to the public at large
24 in the same manner as available to commercial businesses.

25 (e) “Solid waste enterprise” has the same meaning as defined
26 in Section 49504.

27 (f) “Solid waste handling services” has the same meaning as
28 defined in Section 49505.

29 60004. (a) The authority may expend the revenue derived
30 from a permitting and mitigation fee imposed upon a commercial
31 solid waste hauler and collected by the authority only for the
32 following purposes:

33 (1) To oversee, manage, and enforce the authority’s
34 nonexclusive permit or licensing system.

35 (2) To offset those reasonable and necessary regional costs that
36 are incurred by the authority.

37 (b) The restrictions imposed under subdivision (a) are in
38 addition to any other limitation imposed by law on the generation
39 or use of fee revenue by the authority.

1 60006. (a) On or before March 1, 2004, and on or before
2 March 1 of each year thereafter, the authority shall prepare and
3 distribute a detailed report itemizing how fees imposed on
4 commercial solid waste haulers have been expended during the
5 previous calendar year and provide a detailed budget for the
6 proposed use of all fee revenue for the fiscal year commencing the
7 following July 1. The authority shall distribute this expenditure
8 report and proposed budget to each commercial solid waste hauler,
9 to each local Chamber of Commerce, and to any other interested
10 person. The authority shall hold at least one properly noticed
11 public hearing on the expenditure report and the proposed budget
12 before adopting a budget for the fiscal year commencing the
13 following July 1.

14 (b) (1) At the request of a person or entity, the authority shall
15 produce, within 30 days after receiving that request, all requested
16 documents in its possession, custody, or control relating to the
17 generation or use of fee revenue and all decisions or deliberations
18 with respect to the use of fee revenue.

19 (2) If the authority does not comply with this subdivision, the
20 authority may not require the person or entity making that request
21 to pay a fee until the authority complies with this subdivision.

22 (c) On or before March 1, 2004, and at least once every two
23 years thereafter, the authority shall arrange for an independent
24 audit of all costs supported by fee revenue to ensure that these uses
25 are consistent with this division and any other applicable law.

26 60008. (a) If the authority expends fee revenue for a purpose
27 not authorized by this division, or the revenue is generated or used
28 in violation of any other applicable requirement, an aggrieved
29 party may file an action in accordance with this section.

30 (b) Before filing an action under this section, the aggrieved
31 party shall provide a notice to the authority at least 60 days before
32 filing the action.

33 (c) If an aggrieved party does not reach an agreement with the
34 authority after providing a notice under subdivision (b), the
35 aggrieved party may file an action under this section and the
36 following applies to that action:

37 (1) The court shall issue a preliminary injunction against the
38 imposition of the amount of the fee that is being used in violation
39 of this division, if the aggrieved party is able to show that it is likely
40 to prevail on the merits when the case comes to trial.

(2) *The court shall issue a preliminary injunction against imposition of the entire amount of the fee if the aggrieved party is able to show that it is likely to prevail on the merits when the case comes to trial and the authority has failed to comply with the requirements of Section 60004 during any portion of the time period for which damages are sought.*

(3) *The court may not require an aggrieved party to make a showing, other than those specified under paragraph (1) or (2), to obtain a preliminary injunction.*

(d) *An aggrieved party may, upon filing a motion for an injunction under subdivision (c), deposit with the court during the pendency of the motion, the entire amount of any fee due after the date of filing, and the court shall hold the deposit and disburse the amount to the parties in accordance with the court's ruling on the motion. A plaintiff may deposit these funds in lieu of a bond.*

(e) *If an aggrieved party prevails on the merits of an action filed pursuant to this section, the court shall award the aggrieved party damages in the amount of the fee paid by the aggrieved party for any portion of the fee that is used in violation of this division or other applicable requirement, interest from the date of payment by the aggrieved party of that amount at the rate of interest applicable to judgments, and the prevailing party's actual attorneys' fees and costs incurred in connection with the action.*

60010. *This division does not affect or terminate a contract, franchise, or permit entered into on or before January 1, 2004, by the City of Sacramento, the County of Sacramento, or by any other local agency located within the jurisdiction of the authority.*

SEC. 3. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*

~~Code, to read:~~

~~40125. "Electronic waste" means all discarded electronic products, equipment, or materials determined by the board to be subject to this division.~~